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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/615,342	07/12/2000	Richard Parisi	RP-1R	3294

7590  
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07/15/2003

EXAMINER

DANG, HUNG XUAN

ART UNIT PAPER NUMBER

2873

DATE MAILED: 07/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/615,342

Applicant(s)

PARISI, RICHARD

Examiner

Hung X Dang

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Serial Number: 09/615,342

-A-

Art Unit: 2515

1. The amendment filed on 1/15/03 has been entered.

#### **No Offer To Surrender Original Patent**

2. This reissue application was filed without an offer to surrender the original patent or, if the original is lost or inaccessible, an affidavit or declaration to that effect which is required. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before the reissue application can be allowed. See 37 C.F.R. § 1.178.

#### **Original Patent Required Prior To Allowance**

3. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

#### **Information Disclosure Statement**

4.

Applicant is requested to cite all the references are listed in the original patent on form PTO-1449.

Serial Number: 09/615,342

-A-

Art Unit: 2515

**Defective Reissue Oath/Declaration, 37 CFR 1.175**

5. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

The reissue Declaration of record lacks the statement required by 37 CFR 1.175 (a) (2), and thus must particularly specify the excess or insufficiency of each amended or added claim vis-a-vis the original patent claims. The Declaration fails to identify how each newly added claim differs from the original patent claim to which it corresponds.

**Supplemental Declaration Required Prior To Allowance**

6. In accordance with 37 CFR 1.175(b) (1), a supplemental reissue oath/declaration under 37 CFR 1.175(b) (1) must be received before this reissue application can be allowed.

Claims 1-17 are rejected as being based upon a defective Declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b) (1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

Serial Number: 09/615,342

-Å-

Art Unit: 2515

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

### Claims Rejection Under 35 USC - 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-7, 10, 11, 16 and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Boles (2,955,382).

Boles discloses toy holder for nursing bottle which comprises means for releasably gripping the bottle, an elongated member (body of toy) connected to and extending from the gripping means; and a visually stimulating ornament (head of the toy) connected to and end of the elongated member opposite the gripping means and held at a distance from eyes of an infant while feeding from the bottle by the elongated member whereby the visually stimulating ornament is visible to the infant.

Serial Number: 09/615,342

-A-

Art Unit: 2515

### Claims Rejection Under 35 USC - 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Boles** (2,955,382).

Boles discloses toy holder for nursing bottle which comprises means for releasably gripping the bottle, an elongated member (body of toy) connected to and extending from the gripping means; and a visually stimulating ornament (head of the toy) connected to and end of the elongated member opposite the gripping means and held at a distance from eyes of an infant while feeding from the bottle by the elongated member whereby the visually stimulating ornament is visible to the infant.

Serial Number: 09/615,342

-A-

Art Unit: 2515

Although the Boles device does not teach the exact shape of the ornament as that claimed by Applicant, the shape differences are considered obvious design choices and are not patentable unless unobvious or unexpected results are obtained from these changes. It appears that these changes produce no functional differences and therefore would have been obvious.

#### **Claims Objection**

9. Claims 4, 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **Applicant's Argument**

10. Applicant's arguments filed 1/13/03 have been fully considered but they are not persuasive.

Applicant argued at page 7 of the remark that "In order to more clearly distinguish the claims over the reference, independent claims 1, 6 and 7 have been amended to recite that the ornament is located at and limited to the distal or free end of the extension member as clearly seen in Figs. 1

Serial Number: 09/615,342

-A-

Art Unit: 2515

and 2." this argument is not persuasive because Boles ornament (the face of the toy is considered as ornament) is located at and limited to the distal or free end of the extension member (body of toy is considered as extension member). Therefore the claimed invention does not distinguish over the Boles reference.

Applicant argued at page 8 of the remark that "the design of the ornament is considered important to maintain the attention of the infant." This argument is not persuasive. The claimed invention recite the ornament is a flat while Boles reference discloses the face of the toy is not flat. It does not matter the face of the toy is flat or not, it will attract the infant while feeding. Therefore the claimed invention does not distinguish over the Boles reference.

**11. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within



Serial Number: 09/615,342

-A-

Art Unit: 2515

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (703) 308-0550.

5/03



HUNG DANG

PRIMARY EXAMINER

TC 2800